



1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 27:120. Photographers, photo finishers, and x-ray labs.

5 RELATES TO: KRS 139.010, 139.260

6 STATUTORY AUTHORITY: KRS 131.130[(4)]

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the
8 Department of Revenue to promulgate administrative regulations for the administration and
9 enforcement of Kentucky tax laws. This administrative regulation interprets [To interpret] the sales
10 and use tax law as it applies to photographers, photo finishers, and x-ray laboratories.

11 Section 1. Photographers. (1) Photographers are primarily engaged in the business of rendering
12 a nontaxable professional service in the taking, development, [and] printing, and provision of an
13 original photograph. The photographer is [thus] the consumer of all tangible personal property and
14 digital property used in the performance of his or her professional service and the tax shall apply
15 at the time of the sale of the property to the photographer. This treatment shall apply to digital
16 photography and print-based photography. [the tangible personal property which he uses in the
17 performance of this professional service and the tax will apply at the time of the sale of such
18 material to him.]

19 (2) In making additional prints, however, the photographer is producing and selling tangible
20 personal property and the tax shall apply [applies] to the selling price of the prints. The tax shall
21 [does] not apply to sales of property [materials] to the photographer which become an ingredient

1 or component part of the prints to be sold pursuant to KRS 139.260.

2 Section 2. Photo Finishers. (1) The tax shall apply~~[applies]~~ to charges for printing pictures or
3 making enlargements from negatives furnished by the customer but not to charges for developing
4 the negatives if such charges are separately stated. Tax shall~~[does]~~ not apply to charges for tinting
5 or coloring pictures furnished to the finisher by the customer.

6 (2) Tax shall apply ~~[applies]~~ to sales to photo finishers of all tangible personal property and
7 digital property consumed ~~[used]~~ by them in developing negatives, finishing pictures, and coloring
8 or tinting pictures furnished by customers. Property resold to the customer, such as sensitized paper
9 upon which prints are made and frames and mounts sold along with finished pictures, may be
10 purchased by the photo finisher exempt from the tax pursuant to KRS 139.260. ~~[, except sensitized~~
11 ~~paper upon which the prints are made, and frames and mounts sold along with the finished~~
12 ~~pictures.]~~

13 Section 3. X-Ray Laboratories. (1) Developers ~~[Producers]~~ of x-ray film for the purpose of
14 diagnosis are the consumers of materials and supplies used in the production thereof. The tax shall
15 apply to the sale of such materials and supplies to the laboratories developing x-ray film for the
16 purpose of diagnosis. ~~[Thus, the tax applies to the sale of such materials and supplies to laboratories~~
17 ~~producing x-ray film for the purpose of diagnosis.]~~

18 (2) The tax treatment described in Subsection 1 of this section shall apply if ~~[Whether]~~ the
19 laboratory is a "lay laboratory" or is operated by a physician, surgeon, dentist, or hospital~~[-is~~
20 ~~immaterial].~~

103 KAR 27:120

APPROVED BY AGENCY:

Daniel P. Bork
DANIEL P. BORK, COMMISSIONER
Department of Revenue
Finance and Administration Cabinet

November 5, 2019
Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on January 23, 2020, at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov (email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 27:120

Contact Person: Lisa Swiger

Phone Number: (502) 564-9526

Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation interprets the sales and use tax law as it applies to photographers, photo finishers, and x-ray laboratories.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance on the sales and use tax law as it applies to photographers, photo finishers, and x-ray laboratories.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 13A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to clarify information currently contained in the regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by updating statutory references within the "RELATES TO" section and body of the regulation, updating the promulgation statement within the "NECESSITY, FUNCTION, AND CONFORMITY" section, adding digital property and services included in KRS 139.200 per statute, modernizing the language to include digital photography, and updating language within the body of the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide updated and accurate information regarding guidance on the sales and use tax law as it applies to photographers, photo finishers, and x-ray laboratories.

(c) How the amendment conforms to the content of the authorizing statutes: See (2)(a).

(d) How the amendment will assist in the effective administration of the statutes: See (2)(a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All photographers, photo finishers and x-ray laboratories as well as their customers are affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are expected to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no foreseen additional costs to comply with the amended regulation known.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

(5) Provide an estimate of how much it will cost the administrative body to implement this

administrative regulation:

(a) Initially: There are no expected additional costs associated with the implementation of this proposed amendment. Current staff and budgeted funding will absorb the implementation and administration of this administrative regulation as it is currently administered.

(b) On a continuing basis: There are no new costs expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is foreseen.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? (Explain why or why not): Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 27:120

Contact Person: Lisa Swiger

Phone Number: (502) 564-9526

Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenues are expected to be generated for a state or local government agency by updating this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None known.

(c) How much will it cost to administer this program for the first year? No additional costs are expected to be incurred by the Department of Revenue in the first year of this regulation being in effect. Any costs will be absorbed by current staff and department funding.

(d) How much will it cost to administer this program for subsequent years? No additional costs are expected to be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

